

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13531, of Ninthlaw Partnership, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Sub-section 7104.2 to change a non-conforming use from a retail grocery store, first floor, to a retail grocery and delicatessen first floor, in an R-4 District at the premises 1846 - 13th Street, N.W., (Square 238, Lot 839).

HEARING DATE: July 29, 1981
DECISION DATE: September 4, 1981

FINDINGS OF FACT:

1. The subject property is located in an R-4 District on the southwest corner of the intersection of 13th and T Streets, N.W.
2. The subject property has twenty feet of frontage on 13th Street and forty-nine feet of frontage on T Street.
3. The subject property is improved with a two story red brick building. Access to the first floor is from 13th Street, and access to the second floor is from T Street.
4. The first floor of the building is currently used as a retail grocery store pursuant to Certificate of Occupancy No. B-114210, dated August 22, 1979. The second floor is used as an apartment.
5. The retail grocery is known as the Whitelaw Market. It is a legal non-conforming use.
6. The operator of the store proposes to prepare sandwiches and other foods for consumption off the premises. The application thus seeks a change of non-conforming use from a grocery store to a grocery store and delicatessen.
7. A grocery store is first permitted as a matter-of-right in a C-1 District. A delicatessen is also permitted as a matter-of-right in the C-1 District.

8. The store presently operates from 8:30 a.m. to 10:00 p.m., Sunday through Thursday, from 8 a.m. to 11 p.m. on Friday and from 9 a.m. to 11 p.m. on Saturday. There would be no expansion of these hours when the delicatessen use is added.

9. The store is presently operated by the owner, his wife and five other employees. No additional employees will be required to operate the delicatessen.

10. No expansion of the area devoted to the grocery store is required for the delicatessen. The operator proposes to add a microwave oven, a hot dog machine, a sandwich unit, a slicer and a scale to the existing facilities in the building.

11. There will be no facilities for consuming food on the premises.

12. Most of the current customers of the grocery store come from within a two-block radius of the property. Most of the existing customers walk to the store. The operator testified, and the Board so finds, that the delicatessen will serve primarily the existing customers. The proposed facility will thus be a neighborhood use.

13. The addition of a delicatessen to the present grocery store will require no additional deliveries to the building. The present level of delivery traffic does not adversely affect the area.

14. The operator maintains a small trash can outside the first floor of the building. He further keeps the area around the store clean, by policing as necessary.

15. There was no report from Advisory Neighborhood Commission - 1B.

16. The residents of 1327 T Street submitted a letter to the record in support of the application. The owners of 1832 13th Street noted no objection as long as there were no tables or booths in front or in the building.

17. There was no opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception. In order to be granted such an exception, the applicant must demonstrate that it has complied with the requirements of Sub-sections 7104.2 and 8207.2 of the Zoning Regulations. The Board concludes that the applicant has so complied.

The proposed use is permitted in the most restrictive district in which the existing use is permitted. The proposed use will be a neighborhood facility. The proposed use is not likely to create any additional adverse effects, because it does not represent a significant intensification of the existing non-conforming use.

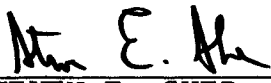
The Board concludes that the exception can be granted for an initial four year period, so that the Board can assess the actual operating impact of the proposed use. The Board further concludes that the special exception can be granted as in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to affect adversely the use of neighboring property in accordance with said regulations and maps. It is therefore ORDERED that the application is GRANTED, SUBJECT to the following CONDITIONS:

1. Approval shall be for a period of FOUR YEARS from the final date of this Order.
2. Approval is limited to the use by the present operator of the store only.
3. No facilities for eating on the premises or the lot shall be provided.
4. One trash receptacle shall be provided on the outside of the building. The operator of the store shall be responsible for keeping the outside of the premises clean.
5. Any additional equipment for the delicatessen inside the store shall be limited to that listed in Exhibit 19 of the record.

VOTE: 4-0 (Charles R. Norris, Lindsley Williams, Douglas J. Patton and Connie Fortune to GRANT; William F. McIntosh not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 12 NOV 1981

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS, AND INSPECTIONS.